APPENDIX "A"

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

EMMET P. BURKE,	)	
	)	
Appellant,	)	
vs.	)	No.
	)	21,614
EVERETT T. CARPENTER, Etc., et al.,	)	
	)	
Appellees.	)	
	)	

[December 15, 1967]

Appeal from the United States District Court For the Central District of California

Before: MERRILL and BROWNING, Circuit Judges, and SOLOMON, District Judge

PER CURIAM:

This is an appeal from a summary judgment granted by the district court in a suit brought by appellant to obtain judicial review of the Post Office Department's reduction of his grade from

Postmaster, PFS Level 9, to Clerk, PFS Level 4. The district court filed a memorandum opinion in which it carefully analyzed the administrative record in the light of appellant's contentions and concluded that the agency had complied with required procedures, that its factual determinations were supported by substantial evidence, and that its action was not arbitrary, capricious, or an abuse of discretion. We agree, and the judgment must therefore be affirmed. Mancilla v. United States, 382 F. 2d 269, 270 (9th Cir. 1967); Baum v. Zuckert, 342 F. 2d 145, 147 (6th Cir. 1965); Seebach v. Cullen, 338 F. 2d 663, 664 (9th Cir. 1964). Whether we would have thought the reduction in grade which the agency ordered the appropriate action in the circumstances had the judgment been ours to make is of course immaterial.

Affirmed.

APPENDIX "B"

The Veterans Preference Act of 1944, 58 Stat., 78th Cong., 2nd Session, Ch. 287 - June 27, 1944.

Section 2, Title 5 U.S.C. 851:

"In certification for appointment, in reinstatement . . . in reemployment and in retention in civilian positions in all establishments, agencies, bureaus . . . perference shall be given to (1) those ex-service men and women . . . who have established the present existence of a service-connected disability . . ."

Section 12, Title 5 U.S.C. 861; (See also Public Law 89-554 §3503):

"In any reduction in any civilisn service of any Federal agency . . . all preference employees shall first be transferred . . . before such agency shall appoint additional employees from any other source for such positions."

Section 14, Title 5 U.S.C. 863; (See also Title 5, §7701):

"No permenent or indefinite preference eligible . . . shall be discharged . . . reduced in rank or compensation . . . except for such cause as will promote the efficiency of the service . . . and for reasons given in writing . . .

and the person . . . whose reduction in rank . . . is sought shall have thirty days advance written such preference eligible shall be allowed reasonable time for answering the same personally and in writing and shall have the right to appeal to the Civil Service Commission from an adverse decision . . . Provided that such preference eligible shall have the right to make a personal appearance . . . after investigation the Civil Service Commission shall submit its findings and recommendations to the proper administrative officer and send copies of the same to the appellant. . . . and it shall be mandatory for such administrative officer to take such corrective action as the Commission finally recommends."

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